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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,493	12/08/2003	Michael T. Morman	KCX-654A (19124A)	2537
22827 7590 10/26/2007 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER CRAIG, PAULA L	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 10/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/730,493

Applicant(s)

MORMAN ET AL.

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,10,11,14 and 22-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,12,13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 10, 2007 has been entered.

### ***Response to Arguments***

2. The affidavit filed July 27, 2007 is acknowledged. Applicant's arguments with respect to Claims 1-6, 9, 12-13, and 15-21 have been considered but are moot in view of the new grounds of rejection.

### ***Claim Objections***

3. Claim 18 is objected to because of the following informalities: In Claim 18, lines 18-19, "the center region" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3761

5. Claims 1-3, 5-6, 9, 18-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,846,232 to Serbiak et al.

6. For Claim 1, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1-9, col. 1, lines 6-10, col. 5, lines 62-67). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). An absorbent body structure 36 is sandwiched between the outer cover member and the bodyside liner (Figs. 1-9, col. 7, line 39 to col. 8, line 60). Serbiak teaches the bodyside liner 24 including a material having a necked base layer of a fluid permeable material, the base layer material being necked by being tensioned in a first direction (col. 3, lines 17-41, col. 4, lines 50-65, col. 7, lines 1-10). At least a first and a second strip 40 of elastomeric material are attached to the necked base layer material with a space between the strips such that a center necked region of the base layer material is bordered on at least two longitudinally extending sides by flat planar composite regions of the elastomeric materials and the base layer material, the center region generally aligned with the absorbent body structure 36 (Figs. 1-9, col. 8, lines 26-48; note that elastics 40 may be ribbons or layers). Serbiak teaches the center region of the necked base layer material being attached to the immediately underlying portion of the absorbent body structure in registry with the center region of necked base layer material in its necked condition (Figs. 1-4 and 6, col. 2, lines 1-17, col. 4, lines 38-42, col. 6, lines 10-44, col. 8, lines 7-

Art Unit: 3761

48; note that the cross-hatched area 37 of the absorbent core 36 is secured to base structure 26, which includes bodyside liner 24). The composite regions are fully capable of stretching in at least a second direction of the absorbent article (Figs. 1-4 and 6, col. 8, lines 26-43, col. 11, lines 8-12). Serbiak teaches that attaching the absorbent core, which is nonextensible, to the base structure prevents extensibility of the absorbent article in the area controlled by the attachment of the absorbent core to the base structure (Figs. 1-4 and 6, col. 4, lines 38-49, col. 8, lines 8-26). Note that Figs. 1, 3, 5, and 6 of Serbiak are top views with the bodyside liner uppermost, which suggests that the attachment indicated by the cross-hatching in these figures includes direct attachment between the absorbent body structure and the necked base layer material of the bodyside liner. Serbiak does not expressly teach that the attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by direct bonding. Applicant's specification does not disclose that directly bonding the base layer material to the absorbent body structure serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification teaches that direct bonding and indirect attachment are equivalent (specification, page 8, lines 11-16). In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include direct bonding of the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

7. For Claim 18, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1-9, col. 1, lines 6-10, col. 5, lines 62-67). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). An absorbent body structure 36 is sandwiched between the outer cover member and the bodyside liner (Figs. 1-9, col. 7, line 39 to col. 8, line 60). Serbiak teaches the bodyside liner 24 including a material having a necked base layer of a fluid permeable material, the base layer material being necked by being tensioned in a longitudinal direction (col. 3, lines 17-41, col. 4, lines 50-65, col. 7, lines 1-10). A strip 40 of elastomeric material is attached to the necked base layer material along a longitudinally extending side thereof to form a flat planar composite region such that a region of the necked base layer material is adjacent a longitudinally extending composite region of the elastomeric material and the base layer material (Figs. 1-9, col. 7, lines 1-10, col. 8, lines 26-48; note that elastics 40 may be ribbons or layers). Serbiak teaches the region of the necked base layer material generally overlying and attached to the immediately underlying portion of the absorbent body structure in registry with the center region of necked base layer material in its necked condition (Figs. 1-4 and 6, col. 2, lines 1-17, col. 4, lines 38-42, col. 6, lines 10-44, col. 8, lines 7-48; note that the cross-hatched area 37 of the absorbent core 36 is secured to base structure 26, which includes bodyside liner 24). The region of base layer material remains generally non-elastic (nonextensible area 37 is non-elastic, col.

Art Unit: 3761

8, lines 18-36). The composite regions are fully capable of stretching in at least a transverse direction in use of the absorbent article (Figs. 1-4 and 6, col. 8, lines 26-43, col. 11, lines 8-12). Serbiak teaches that attaching the absorbent core, which is nonextensible, to the base structure prevents extensibility of the absorbent article in the area controlled by the attachment of the absorbent core to the base structure (Figs. 1-4 and 6, col. 4, lines 38-49, col. 8, lines 8-26). Note that Figs. 1, 3, 5, and 6 of Serbiak are top views with the bodyside liner uppermost, which suggests that the attachment indicated by the cross-hatching in these figures includes direct attachment between the absorbent body structure and the necked base layer material of the bodyside liner. Serbiak does not expressly teach that the attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by direct bonding. Applicant's specification does not disclose that directly bonding the base layer material to the absorbent body structure serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification teaches that direct bonding and indirect attachment are equivalent (specification, page 8, lines 11-16). In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include direct bonding of the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

Art Unit: 3761

8. For Claims 2 and 19, Serbiak teaches the first and second strips 40 of elastomeric materials being superimposed on and aligned with lateral sides of the underlying base layer material (Figs. 1-9, col. 8, lines 26-48).

9. For Claim 3, Serbiak teaches the first and second strips 40 of elastomeric materials including an elastic film (col. 8, lines 26-47; note that elastics 40 may be a layer of elastic material). Serbiak teaches the strips 40 being attached to the base layer material, as described above for Claim 1 in paragraph 6. Serbiak teaches that the strips 40 of elastomeric material may be attached to the necked material while in a stretched position (col. 7, lines 1-10, col. 8, lines 36-39). Serbiak teaches a neck bonded laminate as part of the bodyside liner 24 (col. 7, lines 1-10; note U.S. Patent No. 5,226,992 to Morman is incorporated by reference). Serbiak does not expressly teach the first and second strips and the base layer material being a neck bonded laminate. Applicant's specification teaches that neck bonded laminate is a material having an elastic member that is bonded to a member while the member is extended (specification, page 9, lines 3-8). In light of Serbiak's teaching that the strips of elastomeric material may be attached to the necked material while in a stretched position, it would have been obvious to one of ordinary skill in the art for the first and second strips and the base layer material to be a neck bonded laminate.

10. For Claims 5 and 21, Serbiak teaches the first and second strips 40 of elastomeric materials being attached to the base layer material in a generally tensioned state (col. 8, lines 36-39).



Art Unit: 3761

11. For Claim 6, Serbiak teaches the base layer material being tensioned in the machine direction prior to attaching the first and second strips of elastomeric materials to opposite lateral sides of the base layer material (col. 4, lines 49-65, col. 7, lines 1-10; note Morman '992 is incorporated by reference). The bodyside liner of Serbiak is fully capable of having the longitudinal strips 40 of the composite regions be stretchable in the cross direction bordering the center machine direction region of the necked base layer material (Figs. 1-4 and 6, col. 7, lines 1-10, col. 8, lines 26-47).

12. For Claim 9, Serbiak teaches the base layer material being reversibly necked and creped (col. 4, lines 49-65, col. 7, lines 1-10, col. 10, line 38 to col. 11, line 10; note Morman '992 is incorporated by reference). Serbiak teaches the base layer material being reversibly necked prior to attachment of the first and second strips of elastomeric materials to opposite lateral sides of the base layer material, the base layer material being rendered stretchable such that the bodyside liner material is stretchable in the transverse direction and the longitudinal direction (Figs. 1-4 and 6, col. 4, lines 49-65, col. 7, lines 1-10, col. 10, line 38 to col. 11, line 10). Serbiak is silent as to the base layer material being creped prior to attachment. The limitation of when the creping is done is being treated as a product by process limitation. As set forth in MPEP 2113 product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C. 103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113. Thus, even though Serbiak is silent as to the base layer material being creped prior to attachment, it

Art Unit: 3761

appears that the article in Serbiak would be the same or similar as that claimed. See *In re Thorpe*, 227 USPQ 964 (Fed Cir. 1985), and *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

13. Claims 4, 12-13, 15-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of U.S. Patent No. 6,716,205 to Popp et al.

14. For Claims 4 and 20, Serbiak teaches all the limitations of Claims 1 and 18, as described above in paragraphs 6 and 7. Serbiak does not teach the first and second strips of elastomeric materials being attached to the base layer material in a generally untensioned state. Applicant's specification does not disclose that attaching the strips in a generally untensioned state serves any stated purpose or solves any particular problem. In addition, attaching strips of elastomeric material in a generally untensioned state is well known in the art. Popp confirms this and teaches attaching strips of elastomeric material to a base layer material in a generally untensioned state (col. 9, lines 9-35). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Serbiak to include the strips of elastomeric material being attached to the base layer material in a generally untensioned state, as taught by Popp.

15. For Claim 12, Serbiak teaches the composite regions of the bodyside liner defining machine direction strips extending laterally from the center region (Figs. 1-4 and 6, col. 7, lines 1-10, col. 8, lines 8-48). Serbiak teaches the outer cover member and the composite regions of the bodyside liner both being formed of similar materials (col. 6, lines 44-67, col. 7, lines 1-10). Serbiak does not expressly teach each of the

composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis. Applicant's specification does not disclose that this configuration serves any stated purpose or solves any particular problem. In addition, this feature is well known in the art. Popp confirms this and teaches elasticized composite strips being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the chassis (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (col. 1, lines 35-67). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

16. For Claim 13, Serbiak teaches leg elastics 40 (Figs. 1-4 and 6, col. 8, lines 26-48). Serbiak does not expressly teach leg elastics between the folded composite regions. Popp teaches leg elastics between folded composite regions (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). It would have been obvious to modify Serbiak to

Art Unit: 3761

include leg elastics between folded composite regions, for the same reasons as described above for Claim 12 in paragraph 15.

17. For Claim 15, Serbiak does not teach portions of the composite regions of the bodyside liner being folded outboard of the absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of the absorbent body structure. However, containment flaps formed from folded parts of the bodyside liner are well known in the art. Popp confirms this and teaches an absorbent article with containment flaps formed from folded parts of the bodyside liner (Abstract, Figs. 1-4, 7, col. 1, lines 35-63, col. 5, line 18 to col. 6, line 17). Popp teaches that this configuration creates a bucket for containing body fluids with a soft and comfortable leg and side seal (col. 1, lines 60-63). It would have been obvious to one of ordinary skill in the art to modify Serbiak to include containment flaps formed from folded parts of the bodyside liner, as taught by Popp, for the same reasons as described above for Claim 12 in paragraph 15.

18. For Claim 16, Serbiak teaches the composite regions being attached to an underside of the absorbent body structure (Figs. 1-4 and 6, col. 8, lines 8-47).

19. For Claim 17, Serbiak teaches the composite regions of the bodyside liner defining longitudinal strips extending outwardly from the center region and defining elastomeric side panels (Figs. 1-4 and 6, col. 7, line 1 to col. 8, line 48). Serbiak teaches the absorbent article being a training pant (col. 5, lines 62-67). Serbiak does not expressly teach the elastomeric side panels being attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the

Art Unit: 3761

side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member of the chassis. Applicant's specification does not disclose that this configuration serves any stated purpose or solves any particular problem. In addition, elastomeric side panels attached at side seams to define a pant-like structure are well known in the art; side panels folded outboard and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member are also well known in the art. Popp confirms this and teaches a training pant with elastomeric side panels attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member of the chassis (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (col. 1, lines 35-67). In light of Serbiak's teaching of a training pant, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Serbiak to include the elastomeric side panels being attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

PLC

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

